

**1. Agreement.** These Terms and Conditions of Sale are referred to herein as the “Terms.” The Terms along with any other contract document, including, without limitation, schedules, exhibits or other documents incorporated by reference by such document shall be deemed to incorporate by reference these Terms (the “**Agreement**”). Unless both parties have signed a written agreement that has not expired or been terminated, regarding the sale and purchase of products or services of The D.S. Brown Company (hereinafter “**DSB**”) that are the subject of this Agreement (the “**Products**”), then this Agreement supersedes and replaces all prior agreements, representations and understandings, whether oral or written, and contains the entire agreement between the parties regarding the purchase and sale of the Products. If any term, condition or other provision contained in a schedule, exhibit, or other document expressly incorporated herein by reference is in any way inconsistent with, or adds additional terms to, these Terms, these Terms shall control. DSB’s offer to sell the Products to the purchaser of the Product (the “**Buyer**”) is expressly made conditional on Buyer’s assent to the Agreement. The Agreement may not be modified or amended either orally, by the terms of any purchase order (including, without limitation, any terms and conditions proposed by Buyer’s purchase order), or by any other documentation of Buyer.

**2. Placing Orders.** Any offer or quotation by DSB is subject to change, even if in response to a request for quotation by Buyer, until accepted by DSB under the Agreement. An order for Products from Buyer is only valid and effective, unless, and until, accepted in writing by DSB from its order management department in North Baltimore, Ohio. If an order is rejected by DSB, any deposit received by DSB from Buyer shall be returned to Buyer.

**3. Shipment.** Unless otherwise stated herein in writing, the Products, or any related items shipped with the Products and are the subject of these Terms, is sold EXW DSB’s Dock (Incoterms 2020). If Buyer requires special packaging for the Products, then Buyer must specify such requirements prior to DSB’s acceptance of the order for Products. Any such special packaging for the Products shall be at Buyer’s cost. If DSB assumes responsibility for payment of freight, DSB may select the carrier and routing.

**4. Title Transfer/Risk of Loss.** Unless otherwise stated herein in writing and notwithstanding the applicable Incoterms to the contrary, title and risk of loss of the Products shall pass to Buyer at DSB’s designated shipping point(s).

**5. Price.** All prices for the Products herein stated, previously quoted, or agreed upon at the time of the acceptance of an order are subject to adjustment to DSB’s prices in effect at time of shipment, including, without limitation, increases in raw material costs, freight (to the extent provided by DSB), or any other cost incurred by DSB in the sourcing, production, or shipment of the Products. Buyer agrees to pay such increased prices for the Products as though part of the Agreement at the time the order is accepted by DSB.

**6. Payment/Credit.** Unless stated otherwise in the Agreement, all payment shall be due within thirty (30) days of the date of each invoice, without discount. Any cash discount provided on the sale of the Products will only apply to the price of the Products and not to any other items, including without limitation, taxes, storage, freight or other similar items. All payments not received on the due date set

forth herein, shall be charged an additional one and one-half percent (1 1/2 %) interest rate per month or the maximum amount allowed under applicable law. In addition, any collection costs incurred in collecting past-due invoices, including attorney’s fees, shall be the responsibility of Buyer. If Buyer fails to pay DSB in accordance with the payment terms set forth herein, or if, in the opinion of DSB, Buyer’s financial condition, or Buyer’s ability to perform under this Agreement, is impaired or unsatisfactory, then DSB, at its option and without prejudice to its other rights and remedies, may, without further notice to Buyer: (A) suspend performance, including any pending shipments, until all indebtedness is paid in full; and/or (B) place Buyer’s shipments on a cash-in-advance basis until arrangements are made for security or other assurances, satisfactory to DSB.

**7. Taxes.** Any taxes that DSB may be required to pay or collect, under applicable law, upon or with respect to the sale, purchase, delivery, storage, use or transportation or any Products, or related item covered by this Agreement, including taxes upon or measured by the receipts of the sale thereof, shall be invoiced to Buyer, who shall promptly pay the amount thereof in accordance with the terms of this Agreement.

**8. Delivery.** DSB shall use commercially reasonable efforts to ship any Products covered by this Agreement on or before the shipping date set forth in the Agreement (or as subsequently agreed to in writing between authorized personnel of the parties). NOTWITHSTANDING THE FOREGOING, DSB SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE OR COSTS (INCLUDING LIQUIDATED DAMAGES) OF BUYER RESULTING FROM ANY DELAY OR FAILURE TO MAKE DELIVERY OF ANY PRODUCTS FOR ANY REASON, INCLUDING DUE TO ACTS OF GOD, WAR, ACTS OF TERRORISM, RIOT, CIVIL COMMOTION, SABOTAGE, GOVERNMENTAL ACTION, PANDEMIC, EMBARGO, STRIKES, LABOR DISPUTES, FLOOD, TRANSPORTATION SHORTAGES OR DELAY, MATERIAL SHORTAGES, LABOR SHORTAGES, OR OTHER CAUSES BEYOND THE REASONABLE CONTROL OF DSB. If Products are delayed through no fault of DSB (including as a result of the actions of Buyer), Buyer agrees to accept title to, and make payment for, any such Product as if shipped by DSB on the date the Products due under this Agreement. Buyer further agrees to pay for all storage, handling and other costs related to such delay caused through no fault of DSB. All Products shall be furnished subject to customary manufacturing and commercial variations and practices of DSB. DSB reserves the right to ship amounts less than, over than, the amount or Products ordered in accordance with DSB’s customary practices.

**9. Cancellation/Termination>Returns** Orders for non-custom Products may be cancelled, terminated or returned to DSB by Buyer for a credit against future purchases, less a twenty-five percent (25%) surcharge for re-stocking. No returns will be accepted thirty (30) days after shipment of the Products. Any orders for custom Products may not be cancelled, terminated or returned under any circumstances. From the moment Buyer accepts the order for the Products, custom Products must be accepted by Buyer, even if the Products have not yet been manufactured or delivered to the Buyer.

**10. Allocation.** If sufficient Products are not available for any reason, DSB may allocate Products for its (and its affiliates) needs and among its customers. DSB will make reasonable efforts to obtain additional Products from other sources for delivery to Buyer, provided Buyer agrees to pay all additional costs associated with such Products.

Allocation of Products pursuant to this Section shall completely satisfy and discharge DSB's supply obligations.

**11. Warranty/Disclaimers.** DSB warrants that the Products shall be free from manufacturing defects for a period of one (1) year from the shorter of: (a) the date of installation; or (b) six (6) months from the date of shipment. The warranty does not apply to: (i) reasonable wear and tear of the Products; (ii) normal corrosion of the Products; (iii) use of Products with other products or components to the extent prohibited by, or inconsistent with, DSB's Products documentation or Technical Advice (as defined below); (iv) defects caused by persons other than the DSB, including installation and commissioning of the Products; or (v) misuse, abuse, vandalism, neglect or force majeure events. DSB MAKES NOT OTHER WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF ANY PARTICULAR PROPERTY RIGHT OF ANY THIRD-PARTY, OR WARRANTIES AS TO QUALITY OR CORRESPONDENCE WITH PRIOR DESCRIPTION OR SAMPLE, AND BUYER ASSUMES ALL RISK AND LIABILITY WHATSOEVER RESULTING FROM THE USE OF SUCH PRODUCTS, WHETHER OR IN COMBINATION WITH OTHER SERVICES. DSB's sole responsibility and obligation under this warranty shall become effective only upon full and final payment for the Products furnished by DSB (late payment shall not extend the warranty period).

**12. Technical Advice Disclaimer.** If DSB furnishes technical or other information or advice to Buyer either through its website, in-person, or other method, whether or not at Buyer's request or payment (the "Technical Advice"), such Technical Advice is not a substitute for the sound professional judgement (including, without limitation, engineering advice) of the use, and DSB can not anticipate all conditions or variables for any of Buyer's uses of the Products. AS A RESULT, DSB DISCLAIMS ANY LIABILITY RELATED TO THE TECHNICAL ADVICE AND BUYER ASSUMES ALL RISKS RELATED, SUCH TECHNICAL ADVICE. Buyer should always verify any Technical Advice with a qualified professional. Any reference to other third-party products in connection with the Technical Advice is neither a recommendation, nor an endorsement of any such third-party product and does not imply that such third-party products are compatible with the Products.

**13. Indemnity.** Subject to the Limitation of Liability set forth in this Agreement, each party hereto, shall defend, indemnify and hold harmless the other party from and against all actual or alleged liability, loss, or damage to third parties resulting from or arising out of the indemnifying party's negligent handling or use of the Products (including in connection with the installation of the Product in the end project). The Products shall be deemed to be in the other party's possession or control upon transfer of risk of loss.

**14. Limitation of Liability.** IN NO EVENT SHALL DSB BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE LOSS OR DAMAGE, OR CONSEQUENTIAL LOSS, INCLUDING, BUT NOT LIMITED TO, LOSS OF USE, LOSS OF BUSINESS AND BUSINESS INTERRUPTION, OR ANTICIPATED PROFIT, REGARDLESS OF WHETHER SUCH DAMAGES ARISE FROM A TORT (INCLUDING NEGLIGENCE), CONTRACT STRICT LIABILITY OR OTHER THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE OR IF SUCH LOSS OR DAMAGE COULD HAVE BEEN REASONABLY FORESEEN. DSB'S TOTAL LIABILITY AND BUYER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CAUSE OF ACTIONS ASSOCIATED WITH THIS AGREEMENT, WHETHER BASED IN TORT, CONTRACT, STRICT LIABILITY OR ANY OTHER LEGAL THEORY IS EXPRESSLY LIMITED TO EITHER: (A) THE

REPAIR OR REPLACEMENT OF THE PRODUCTS THAT DO NOT MEET THE WARRANTY HEREIN WITHOUT COST TO BUYER; OR (B) THE PURCHASE PRICE ACTUALLY PAID FOR THE PRODUCTS THAT GAVE RISE TO THE LIABILITY.

**15. Compliance with Laws.** Each party agrees to comply with all applicable laws, rules, and regulations ("Laws"), from whatever authority they may emanate, provided they are not in conflict with U.S. Law. Moreover, each party agrees to comply with all applicable U.S. Laws, including but not limited to those Laws administered or enforced by the following U.S. departments and agencies: EPA, OSHA, Commerce Department, State Department and Treasury Department. Furthermore, Buyer shall comply with all applicable export control and trade embargo Laws (including but not limited to the U.S. Export Administration Regulations, the U.S. International Traffic in Arms Regulations, the regulations administered by the Department of the Treasury's Office of Foreign Assets Control and the U.S. Foreign Trade Statistics Regulations), and shall not resell, export, re-export, distribute, transfer or dispose of the Product, directly or indirectly, without first obtaining all necessary written consents, permits, authorizations, and licenses and completing such formalities as may be required by any such Laws. Failure by Buyer to comply with such Laws shall constitute a material breach of this Agreement. Buyer agrees to impose this same compliance requirement in its contracts with third parties pertaining to the Products. In the event this Agreement, or any material obligation or action herein imposed upon either party hereto, shall at any time conflict with any such Law, such that a material change to the terms of this Agreement would be required to restore compliance with Law, then the party affected by such change shall have the right to terminate this Agreement by notice to the other party. Such termination shall not relieve Buyer of its obligation to pay in full any unpaid balances due hereunder; DSB shall be relieved of any obligation to make additional deliveries hereunder as of the date of such termination.

**16. Governing Law/Waiver of Jury Trial/Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio (regardless of the laws that might otherwise govern under applicable Ohio conflicts of laws principles) as to all matters, including matters of validity, construction, effect, performance, and remedies. Each party hereto irrevocably consents to the jurisdiction of the courts of the State of Ohio and of any federal courts located in Lucas County, Ohio in connection with any action, suit or other proceeding arising out of or relating to this Agreement or any action taken or omitted hereunder, and waives any claim of forum non convenient and any objections as to laying of venue. Each party further waives personal service of any summons, complaint or other process and agrees that service thereof may be made by certified or registered mail directed to such party at such party's address for purposes of notices hereunder. Each party hereby waives its right to a trial by jury of any claim arising under or in connection with this Agreement.

**17. Assignment** This Agreement shall not be assigned by either party without the written consent of the other, except to its successor-in-interest by operation of law or to the transferee of all or substantially all of the party's assets to which this Agreement relates. In addition, DSB may, without the consent of Buyer, assign its rights to collect and receive payment of amounts due hereunder in connection with a factoring, securitization, or other similar arrangement regarding some or all of DSB's receivables.

**18. Relationship of Parties.** The relationship between the parties is that of independent buyer. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment, or fiduciary relationship

between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

**19. Waiver.** Except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

**20. Severability.** Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**21. Notices.** All notices required hereunder shall be given by (i) telephone (confirmed promptly in writing) or shall be in writing and personally delivered, (ii) sent by facsimile transmission (during business hours) if the sender on the same day sends a confirming copy of such notice by reputable overnight delivery services (charges prepaid), (iii) reputable overnight delivery service (charges prepaid) or (iv) certified United States mail, postage prepaid return receipt requested, and addressed to the respective parties at their addresses set forth in the Agreement, or at such other address as any party shall hereafter inform the other party by written notice given as aforesaid. All written notices so given shall be deemed effective upon receipt.

**22. Construction of Agreement/Headings.** No rule of construction requiring interpretation against the drafting party hereof shall apply in the interpretation of this Agreement. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

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